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In re Application of
Hails et al.
Application No. 10/088026
PCT No.: PCT/GB00/03249
Int. Filing Date: 22 August 2000
Priority Date: 15 September 1999
Atty. Docket No.: 124-933
For: New Methods Of Fabricating
Devices And Semiconductor Layers
Comprising Cadmium Mercury...

DECISION ON

PAPERS UNDER

37 CFR 1.42

This is in response to the papers filed on 03 June 2002, which are being treated under 37 CFR 1.42.

BACKGROUND

This international application was filed on 22 August 2000, and claimed a priority date of 15 September 1999. The International Bureau transmitted a copy of the published international application to the USPTO on 22 March 2001. A Demand electing the United States was filed before the expiration of 19 months from the priority date. Accordingly, the 30 month time period to file the basic national fee in the U.S. expired as of midnight on 15 March 2002.

On 14 March 2002, applicants filed *inter alia* the basic national fee.

On 22 May 2002, a Notification of Missing Requirements (Form PCT/DO/EO/905) was mailed to applicants, requiring the filing of an executed oath or declaration of the inventors in compliance with 37 CFR 1.497(a) and (b).

The instant papers were filed on 03 June 2002.

DISCUSSION

Inspection of the declaration reveals that it has been signed by "Saamara N. Turney (legal representative)," apparently on behalf of deceased joint inventor John Stevenson. 37 CFR 1.42 provides in part that

In case of the death of the inventor, the legal representative (executor, administrator, etc.) Of the deceased inventor may make the necessary oath or declaration, and apply for and obtain the patent.

Meanwhile, 37 CFR 1.497(b)(2), as amended effective 08 September 2000, provides that

If the person making the oath or declaration is not the inventor (§§ 1.42, 1.43 or 1.47), the oath or declaration shall state the relationship of the person to the inventor, and, upon information and belief, the facts which the inventor would have been required to state. If the person signing the oath or declaration is the legal representative of a deceased inventor, the oath or declaration shall also state that the person is a legal representative and the citizenship, residence and mailing address of the legal representative.

Former § 1.44 required that proof of the authority of the legal representative be submitted. Effective 08 September 2000, § 1.44 was removed and reserved. The requirement to submit proof of legal authority was thereby eliminated. Thus, the signature and accompanying identification of the legal representative is sufficient to establish that the legal representative may make application on behalf of the deceased inventor.

Review of the copy of the declaration filed on 03 June 2002 reveals that it was executed by "Saamara N. Turney (legal representative)," but it does not clearly indicate whether she is acting in the capacity of legal representative *specifically for John Stevenson* in accordance with 37 CFR 1.42. The declaration includes citizenship, residence and post office address information for Saamara Turney, but does not include the citizenship, residence and mailing address of John Stevenson. Moreover, the declaration does not properly identify the specific place of residence of joint inventor Douglas F. Foster (it merely refers to "Fife," presumably a municipality, without specifying the location of Fife). As such, the declaration is not in compliance with 37 CFR 1.497(b)(2). Accordingly, it would not be appropriate to accord the application status pursuant to 37 CFR 1.42 on the basis of the present record.

DECISION

The papers under 37 CFR 1.42 are **DISMISSED**, without prejudice.

Any further correspondence with respect to this matter should be addressed to the Assistant Commissioner for Patents, Box PCT, Washington, DC 20231, with the contents of the letter marked to the attention of the PCT Legal Office.



for Richard Cole
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